BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

MARY E. HORTON Claimant	}
VS.) Dooket No. 169 070
PROVIDENCE-ST. MARGARET) Docket No. 168,079 HEALTH CENTER
Respondent AND	
HARTFORD ACCIDENT & INDE	MNITY
Insurance Carrier AND	
KANSAS WORKERS COMPENS	SATION FUND

ORDER

On October 6, 1994, the Appeals Board heard the respondent's request for review of the Award of Administrative Law Judge Alvin E. Witwer, dated August 2, 1994.

APPEARANCES

The claimant appeared by and through her attorney, Robert W. Harris of Kansas City, Kansas. The respondent and its insurance carrier appeared by and through their attorney, Steven C. Alberg of Overland Park, Kansas. The Kansas Workers Compensation Fund appeared by and through its attorney, Terri Z. Austenfeld of Mission, Kansas.

RECORD

The record considered by the Appeals Board is the same as that enumerated in the Award of the Administrative Law Judge.

STIPULATIONS

The stipulations are listed in the Award of the Administrative Law Judge and are hereby adopted by the Appeals Board for this review.

Issues

The issues for determination by the Appeals Board are the same as those considered by the Administrative Law Judge, to wit:

- (1) Whether or not the claimant sustained personal injury by accident on September 10, 1991.
- (2) Whether or not the claimant's alleged personal injury by accident on September 10, 1991 arose out of and in the course of her employment with the respondent.
- (3) What was the claimant's average weekly wage?
- (4) Whether or not the claimant is entitled to any future medical treatment at the expense of the respondent-insurance carrier and/or Kansas Workers Compensation Fund.
- (5) Whether or not the claimant is entitled to be paid the sum of not more than \$350 by the respondent-insurance carrier and/or Kansas Workers Compensation Fund as an unauthorized medical allowance.
- (6) The extent of permanent partial disability to the claimant's left leg sustained by her on September 10, 1991.
- (7) What, if any, is the compensation due the claimant as the result of her alleged personal injury by accident on September 10, 1991?
- (8) Whether or not the Kansas Workers Compensation Fund would be liable for the claimant's alleged personal injury by accident on September 10, 1991, or the resulting disability, if any, and if so found liable, to what extent the Kansas Workers Compensation Fund would be so liable.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire record, the Appeals Board finds the findings of fact and conclusions of law, as enumerated in the Award of the Administrative Law Judge, to be accurate and the Appeals Board adopts same as its own findings of fact and conclusions of law as if specifically set forth herein as to each issue. It should be noted with regard to Finding No. 3 by the Administrative Law Judge, concerning claimant's average weekly wage, that the applicability of K.S.A. 44-511(b)(7) to this factual situation was not made an issue by the parties.

Respondent conceded in its brief that, "Since there is no dispute that the Claimant was engaged in part time work at both of her employer (sic), namely U.S.D. 500 and Respondent's, then K.S.A. 44-511(b)(7) applies." Accordingly, the Appeals Board was not asked to decide whether claimant was performing the same or a very similar type of work on a part-time basis for both of her employers. Furthermore, in affirming this Award, the Appeals Board is not deciding the issue of whether K.S.A. 44-511(b)(7) applies to a situation where a claimant performed the same or a very similar type of work on a part-time basis for each of two or more employers, but where the injury was sustained by an accident arising out of and in the course of only a single employment.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Alvin E. Witwer, dated August 2, 1994, should be, and hereby is, affirmed in all respects. The orders contained in the Award are adopted by the Appeals Board as its own.

IT IS SO ORDERED.	
Dated this day of March 1995.	
BOARD MEMBER	
BOARD MEMBER	
DOAND WEWDEN	
BOARD MEMBER	

c: Robert W. Harris, Kansas City KS Steven C. Alberg, Overland Park KS Terri Z. Austenfeld, Mission, KS Alvin E. Witwer, Administrative Law Judge George Gomez, Director